



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

MEMORIAL HERMANN HOSPITAL SYSTEM
3200 SOUTHWEST FRWY SUITE 2200
HOUSTON TX 77027

Respondent Name

LIBERTY INSURANCE CORP

Carrier's Austin Representative Box

Box Number 28

MFDR Tracking Number

M4-10-2192-01

MFDR Date Received

December 17, 2009

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "It is the hospital's position that the hospitalization was an emergency as defined pursuant to the Acute Care Hospital Fee guideline. Liberty Mutual denied any reimbursement to the hospital on the basis that preauthorization was not obtained. However, pursuant to the Fee Guideline, preauthorization is not required for emergency admissions." "It is the hospital's position that the patient required emergency medical treatment to resolve his complicated medical condition. Because there is no certainty or predictability as to what a patient's needs will be in any given emergency admit, the cost of providing necessary care and treatment cannot be predicted with any degree of certainty. We are requesting that payment be issued, including late payment interest."

Amount in Dispute: \$86,985.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The claimant was admitted to Memorial Hermann Hospital on 12/02/2008 for an emergency and did not require pre-authorization for the critical care services billed for the 12/02/08-12/31/2008 dates of service; however, it is Liberty Mutual's contention that pre-authorization was required when the claimants status stabilized and he no longer required emergency services. According to rule §134.600. Pre-authorization is required for: (p) Non-emergency health care requiring preauthorization includes: (1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay." "Since the services provided for the 01/10/2009 through 01/13/2009 dates of service were not emergency or critical care services, we believe that pre-authorization was required"

Response Submitted by: Liberty Mutual

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 1, 2009 Through January 13, 2009	Inpatient Hospital Services	\$86,985.00	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §134.600, titled *Preauthorization, Concurrent Review, and Voluntary Certification of Health Care*, effective May 2, 2006 sets out the requirements for preauthorization, concurrent review and voluntary certification of specific treatment and services.
2. 28 Texas Administrative Code §133.2, titled *Definitions*, effective July 27, 2008, 33 TexReg 5701, defines a medical emergency.
3. 28 Texas Administrative Code TAC §134.404, titled *Hospital Facility Fee Guideline – Inpatient*, effective March 1, 2008 sets out reimbursement guidelines for inpatient hospitalizations.
4. 28 Texas Administrative Code §133.305, titled *MDR – General*, effective May 25, 2008, 33 TexReg 3954, defines a preauthorization or concurrent medical necessity dispute.
5. 28 Texas Administrative Code TAC §133.308, titled *MDR by Independent Review Organizations*, effective May 25, 2008, 33 TexReg 3954, applies to the independent review of network and non-network preauthorization, concurrent, or retrospective medical necessity disputes that is remanded to the Division or filed on or after May 25, 2008.
6. 28 Texas Administrative Code §133.307, titled *MDR of Fee Disputes*, effective May 25, 2008, 33 TexReg 3954, sets out the procedure for filing medical fee disputes with the Division.
7. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated 3/12/2009

- X170-Pre-Authorization was required, but not requested for this service per DWC Rule 134.600.

Explanation of benefits dated 6/9/2009

- X170-Pre-Authorization was required, but not requested for this service per DWC Rule 134.600.
- X598-Claim has been re-evaluated based on additional documentation submitted; no additional payment due.

Explanation of benefits dated 8/7/2009

- X170-Pre-Authorization was required, but not requested for this service per DWC Rule 134.600.
- X598-Claim has been re-evaluated based on additional documentation submitted; no additional payment due.

Issues

1. Does the disputed inpatient hospitalization require preauthorization per 28 Texas Administrative Code §134.600?
2. Does a preauthorization dispute exist?
3. Did the requestor seek medical dispute resolution in accordance with 28 Texas Administrative Code §133.308?
4. Does medical fee dispute resolution have jurisdiction to review this dispute in accordance with 28 Texas Administrative Code §133.307?

Findings

1. 28 Texas Administrative Code §134.600(c) effective May 2, 2006, TexReg 31 TexReg 3566, states “The carrier is liable for all reasonable and necessary medical costs relating to the health care: (1) listed in subsection (p) or (q) of this section only when the following situations occur:
(A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);
(B) preauthorization of any health care listed in subsection (p) of this section that was approved prior to providing the health care;
(C) concurrent review of any health care listed in subsection (q) of this section that was approved prior to providing the health care; or
(D) when ordered by the Commissioner.”

28 Texas Administrative Code §133.2(3) effective July 27, 2008, 33 TexReg 5701, defines a medical emergency as “(A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

- (i) placing the patient's health or bodily functions in serious jeopardy, or
- (ii) serious dysfunction of any body organ or part.”

The respondent states in the position summary that "The claimant was admitted to Memorial Hermann Hospital on 12/02/2008 for an emergency and did not require pre-authorization for the critical care services billed for the 12/02/08-12/31/2008 dates of service." The respondent further states that "...pre-authorization was required when the claimants status stabilized and he no longer required emergency services... Since the services provided for the 01/10/2009 through 01/13/2009 dates of service were not emergency or critical care services, we believe that pre-authorization was required." [Based upon the submitted medical bill and EOBs, the Division concludes that the respondent made a typographical error in the response and should state 01/01/2009 instead of 01/10/2009]

The requestor disagrees that preauthorization was required because "It is the hospital's position that the hospitalization was an emergency as defined pursuant to the Acute Care Hospital Fee guideline. Liberty Mutual denied any reimbursement to the hospital on the basis that preauthorization was not obtained. However, pursuant to the Fee Guideline, preauthorization is not required for emergency admissions."

28 Texas Administrative Code §134.600(p) Non-emergency health care requiring preauthorization includes: (1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay.

28 Texas Administrative Code §134.600(q) states "The health care requiring concurrent review for an extension for previously approved services includes: "(1) inpatient length of stay."

The Division finds that once the inpatient hospital services were not a medical emergency as defined in 28 Texas Administrative Code §133.2(3), preauthorization was required per 28 Texas Administrative Code §134.600(p) and/28 Texas Administrative Code §134.600(q).

2. 28 Texas Administrative Code §133.305(a)(7), states "Preauthorization or concurrent medical necessity dispute--A dispute that involves a review of adverse determination of network or non-network health care requiring preauthorization or concurrent review. The dispute is reviewed by an independent review organization (IRO) pursuant to the Insurance Code, the Labor Code and related rules, including §133.308 of this subchapter (relating to MDR by Independent Review Organizations)."

The Division finds that based upon the submitted EOBs dated 3/12/09, 6/9/09 and 8/7/09, the respondent denied reimbursement for the hospitalization based upon the requestor's failure to obtain preauthorization in accordance with 28 Texas Administrative Code §134.600. Therefore, the unresolved preauthorization issues are subject to IRO review per 28 Texas Administrative Code §133.308.

3. 28 Texas Administrative Code §133.308(i), states "Timeliness. A requestor shall file a request for independent review with the insurance carrier (carrier) that actually issued the adverse determination or the carrier's utilization review agent (URA) that actually issued the adverse determination no later than the 45th calendar day after receipt of the denial of reconsideration. The carrier shall notify the Department of a request for an independent review within one working day from the date the request is received by the carrier or its URA. In a preauthorization or concurrent review dispute request, an employee with a life-threatening condition, as defined in §133.305 of this subchapter (relating to MDR -- General), is entitled to an immediate review by an IRO and is not required to comply with the procedures for a reconsideration." The requestor submitted EOBs dated 3/12/09, 6/9/09 and 8/7/09, that indicate that the respondent denied reimbursement for the hospitalization based upon the requestor's failure to obtain preauthorization in accordance with 28 Texas Administrative Code §134.600. Since this dispute contained preauthorization, concurrent review, and/or retrospective medical necessity issues, the requestor had 45 calendar days to request for IRO review to resolve this issue in accordance with 28 Texas Administrative Code §133.308. Based upon the submitted documentation, the requestor did not submit a request for IRO review; therefore, the requestor has waived its right for review of the preauthorization issues regarding the hospitalization.

4. 28 Texas Administrative Code §133.307(a)(1) states "This section applies to a request for medical fee dispute resolution for non-network or certain authorized out-of-network health care not subject to a contract, that is remanded to the Division or filed on or after May 25, 2008."

28 Texas Administrative Code §133.307(a)(3) states "In resolving non-network disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the Division of Workers' Compensation (Division) is to adjudicate the payment, given the relevant statutory provisions and Division rules." Because this dispute contains unresolved preauthorization issues, the Division is unable to adjudicate the payment per 28 Texas Administrative Code §133.307(a)(1) and (3).

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division concludes that this dispute was not filed in the form and manner prescribed under 28 Texas Administrative Code §133.305(a)(7), §133.308(i), and §133.307(a)(1). The Division further concludes that the requestor failed to meet its burden of proof to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____	_____	<u>2/20/2013</u>
Signature	Medical Fee Dispute Resolution Officer	Date

_____	_____	<u>2/20/2013</u>
Signature	Medical Fee Dispute Resolution Manager	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.